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CHESAPEAKE & O. RY. CO. *v.* CHRISTIAN'S ADM'X.

March 10, 1910.

[67 S. E. 345.]

1. Master and Servant (§ 112*)—Injury to Servant—Negligence—Railroad Track.—Where, in an action for the death of a yard conductor, there was evidence that on the day of the accident decedent in the discharge of his duty was standing on the step in front of an engine; that the step was not properly fastened at the ends, of which the railroad had notice, and was defective; that the ends of the rails of the track would sink when the engine passed over them; that the planks laid lengthwise between the rails were not fastened at their ends to the ties as they should have been; and that as the engine passed the track sank, and the ends of the planks did not, but struck the step on which decedent was standing, breaking it, and throwing him in front of the engine which ran over him—a finding of actionable negligence was authorized.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 219, 220; Dec. Dig. § 112.* 9 Va.-W. Va. Enc. Dig. 671, 725; 14 id. 686.]

2. Appeal and Error (§ 1002*)—Verdict—Conclusiveness.—It is the province of the jury to pass on the credibility of the witnesses, and to reconcile, if possible, the conflicts in the oral testimony; and, where that cannot be done, the jury may give credence to the witnesses who in their judgment are best entitled to it, and a verdict on conflicting evidence will not be disturbed on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3935; Dec. Dig. § 1002.* 1 Va.-W. Va. Enc. Dig. 620; 14 id. 102.]

3. Master and Servant (§ 289*)—Injury to Servant—Contributory Negligence.—Whether a yard conductor, killed by being thrown from the step in front of the engine, was guilty of contributory negligence held, under the evidence, for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1089-1132; Dec. Dig. § 289.* 10 Va.-W. Va. Enc. Dig. 419; 14 id. 774.]

4. Trial (§ 252*)—Instructions—Issues.—Where, in an action for the death of a servant, the evidence was conflicting on the issues of negligence and contributory negligence, instructions properly submitting the issues were not objectionable as not justified by the evidence.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 602; Dec. Dig. § 252.* 10 Va.-W. Va. Enc. Dig. 412; 14 id. 773.]

5. Master and Servant (§ 278*)—Injury to Servant—Defect in Railroad Track—Evidence.—Where, in an action for the death of a

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

yard conductor thrown from the step in front of the engine, the evidence showed that planks laid lengthwise between the rails struck the step and broke it, the fact that the engine had passed over the track where the accident had occurred several times that day without injury to the engine, track, or crew was but a circumstance to be considered in determining whether the step, roadway, or track was in a reasonably safe condition, and an instruction assuming that such a circumstance disproved negligence, or giving it undue weight, was properly refused.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 963; Dec. Dig. § 278.* 7 Va.-W. Va. Enc. Dig. 723, et seq.; 14 id. 564.]

6. Appeal and Error (§ 1052*)—Harmless Error—Erroneous Admission of Evidence.—The error in permitting a witness to answer an improper question was harmless, where the witness showed that he had no knowledge on the subject.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4171; Dec. Dig. § 1052.* 1 Va.-W. Va. Enc. Dig. 592, et seq.; 14 id. 92.]

Error to Circuit Court of City of Clifton Forge.

Action by Christian's Administratrix against the Chesapeake & Ohio Railway Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

R. L. Parrish, for plaintiff in error.

Chas. & D. Curry and *F. W. King*, for defendant in error.

BANK OF PHŒBUS v. BYRUM.

March 10, 1910.

[67 S. E. 349.]

1. Attachment (§ 27*)—Nonresident—Ceded Territory.—Code 1904, § 15a, par. 2, provides that exclusive jurisdiction in and over any land acquired by the United States for military purposes shall be ceded to the United States for all purposes except the service on such sites of civil and criminal process of the courts of the state. Held, that the fact that process may be served on a defendant residing on the military reservation known as "Fortress Monroe" is not the test of the right to issue an attachment against him as a nonresident.

[Ed. Note.—For other cases, see Attachment, Dec. Dig. § 27.* 2 Va.-W. Va. Enc. Dig. 79.]

2. Attachment (§ 27*)—Nonresidence—Military Reservation.—Where a citizen of North Carolina enlisted as a soldier in the United States army, and was stationed in Fortress Monroe, he did not thereby

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.